



NC: 2026:KHC:33070-DB
MFA No. 7083 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2026

PRESENT

HON'BLE MR. JUSTICE JAYANT BANERJI

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO.7083 OF 2021
(MV-I)

BETWEEN:

SRI. RAVI
S/O GOVINDAIAH
AGED ABOUT 41 YEARS
R/AT NO.99, AMBEDKAR BEEDI
KASABA HOBLI RAMANAHALLI POST
HANCHYA RAMANAHALLI
MYSORE – 570 019.

...APPELLANT

(BY SRI. SHANTHARAJ K., ADVOCATE)

AND:

1. NIKHIL JUNEJA
S/O MANMOHAN JUNEJA
AGED ABOUT 48 YEARS
RESIDING AT NO.CW-563
SANJAGANDHI TRANSPORTNAGAR CITY
NORTH-WEST
DELHI – 110 042.
2. NATIONAL INSURANCE CO. LTD.,
BY ITS MANAGER
DIVISION OFFICE-II
NO.1, SRI. SREENIVASA PLAZA
1ST FLOOR, 5TH STAGE
ADICHUNCHANAGIRI ROAD

Digitally
signed by
SOMATHY
KANNAN
Location
HIGH COURT
OF KARNATAKA



KUVEMPUNAGAR
MYSURU – 570 023.

...RESPONDENTS

(VIDE ORDER DATED 10.10.2023, NOTICE TO R1 IS
DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
PRAYING TO ALLOW THE ABOVE APPEAL BY MODIFYING THE
JUDGMENT AND AWARD DATED 28.10.2021 PASSED IN MVC
NO.335/2018 ON THE FILE OF THE LEARNED PRINCIPAL
JUDGE, COURT OF SMALL CAUSES AND SENIOR CIVIL JUDGE
AND MACT, MYSURU, ENHANCING THE COMPENSATION, IN
THE INTEREST OF JUSTICE.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
&
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present appeal has been filed impugning the
common Judgment and Award dated 28.10.2021 in
M.V.C.Nos.334/2018 and 335/2018 passed by the
Principal Juge, Court of Small Causes and Motor Accidents
Claims Tribunal, Mysuru, (hereinafter referred to as the
'Impugned Award") By the Impugned Award, the learned
Tribunal in M.V.C.No.334/2018 awarded Rs.3,02,000/-



and in M.V.C.No.335/2018, Rs.11,10,500/- along with interest at the rate of 6% per annum from the date of petition till the date of deposit.

2. Two claim petitions were filed in respect of the same accident. MVC No.335/2018 was filed by the husband, while MVC No.334/2018 was filed by the wife. The challenge in the present appeal is by the husband against an Award passed in MVC No.335/2018.

3. Notice to respondent No.1 was dispensed with, by an order dated 10.10.2023 passed by this Court. The Appeal though listed for admission, given the pendency of this appeal for six years and with the consent of the parties, this Court has heard and decided the appeal finally today itself.

4. The brief facts of the case are that on 12.12.2017 at about 03.30 p.m., the appellant/claimant was riding his motorcycle bearing registration No.KA-55 J-0184 along with his wife as a pillion rider on the left side of the road. At that time, a driver of a lorry bearing registration



No.RJ-14 GH-8535 stated to be driving the lorry in a rash and negligent manner hit the motorcycle of the appellant/claimant from the rear side causing the accident. Due to the accident, the appellant/claimant as well as the pillion rider fell down and sustained injuries. The appellant/claimant was taken to Vidyaranya Hospital and thereafter he was shifted to JSS Hospital, Mysuru, where he took treatment as an inpatient and underwent several operations. However, the injuries led to the amputation of his right upper limb below elbow.

5. A claim petition was filed by the appellant/claimant under Section 166 of the Motor Vehicles Act, 1988, which was listed and numbered as MVC No.335/2018. It was stated therein that the appellant/claimant has spent Rs.2,00,000/- towards medical expenditure as a result of the accident and that prior to the accident the appellant/claimant was doing coolie work and earning Rs.15,000/- per month. However, he is unable to do his work and has become permanently disabled.



5.1 The claim was contested by the respondent No.2/Insurance Company who filed objections. The Insurance company although admitted that the Lorry was insured with them, denied the contentions and the injuries of the appellant/claimant. It was further stated that the accident was caused due to the negligence on the part of the appellant/claimant himself.

5.2 Although driver/owner of the Lorry was served, he did not appear before the learned Tribunal and was placed *ex parte*.

6. Based on the pleadings of the parties, the following issues were framed:

- 1) *"Whether the petitioner proves that he has sustained grievous injuries in a road traffic accident arising out of use of vehicle bearing No.RJ-14 GH 8535 on 12.12.2017 at about 3.30 P.M. due to the actionable negligence on the part of the driver?"*
- 2) *Whether the petitioner is entitled for any compensation? If so, at what extent and from whom?*
- 3) *What Order or relief?"*

7. The present petition as well as MVC No.334/2018 arising out of the same accident were clubbed together



and common evidence was led. The appellant/claimant was examined as P.W.2 and exhibited the documents marked as Ex.P13 to Ex.P17. The treating doctor who was an orthopedic surgeon was examined as P.W4 and documents were marked by him as well. The FIR (Ex.P1), Spot panchanama (Ex.P3), IMV Report (Ex.P5) and Chargesheet (Ex.P6) were exhibited by the claimant in MVC No.334/2018, while the wound certificate (Ex.P13), X-ray Films report (Ex.P21), Discharge Summary (Ex.P14 and Ex.15) and medical bills (Ex.P11) were exhibited by the appellant/claimant.

7.1. The Respondent No.2/Insurance Company examined two witnesses as R.Ws.1 and 2 and also produced the documents as Exs.R1 to R6.

8. The learned Tribunal after examining the documents such as charge sheet, FIR, rough sketch, IMV report and charge sheet exhibited by the appellant/claimant, specifically held that rash and negligent driving of the offending vehicle stood proved. It was stated that



appellant/claimant was earning Rs.15,000/- per month. Since, no proof of income was produced, the Tribunal took an income at Rs.7,000/- per month. In addition, after examining the wound certificate (Ex.P13) and considering the nature of injuries and other related documents including photographs and CDs produced at Ex.P17 and relying on the evidence of the doctor, it was held that the functional disability would be considered at 14%. Thus, the loss of future income was calculated as follows:

$$[Rs.7,000 \times 12 \times 15 \times 80\% = Rs.10,08,000/-]$$

8.1 The learned Tribunal also awarded compensation towards pain and suffering, loss of income during laid up period, attendant charges, extra diet & nourishment and conveyance, loss of amenities and future medical expenses as under:

Sl. No.	Heads of Compensation	Amount
1)	Compensation towards pain, shock and sufferings	Rs. 40,000/-
2)	Compensation towards loss of income during laid up period	Rs. 21,000/-



3)	Compensation towards attendant charges, extra diet, nourishment and conveyance	Rs. 23,000/-
4)	Compensation towards loss of amenities	Rs. 5,000/-
5)	Compensation towards medical expenses	Rs. 13,500/-
6)	Compensation towards loss of future income	Rs. 10,08,000/-
	Total	Rs. 11,10,500/-

8.2 Thus, the appellant/claimant was awarded an amount of Rs.11,10,500/- along with interest at the rate of 6% per annum was awarded by the learned Tribunal.

9. Learned counsel for the appellant/claimant submits that the Impugned Award suffers from an infirmity. He submits that the injuries of the appellant/claimant were to the extent of amputation of his right hand below elbow. Since the appellant/claimant was a mason by profession and doing coolie work, his functional disability would be 100%. However, the Learned Tribunal has only awarded 80%. In addition, learned counsel submits that the notional income for the accident of the year 2017 was Rs.11,000/- but the learned Tribunal has taken the



monthly income of the appellant/claimant as Rs.7,000/-. Lastly, it is contented that the amounts awarded for non-pecuniary heads are also on the lower side, given the nature of injuries suffered by the appellant/claimant.

10. Learned counsel for the respondent No.2/Insurance Company, on the other hand, while does not dispute that the notional income was Rs.11,000/- in the year 2017, submits that the amount awarded on other heads in accordance with law.

11. Based on the contention of the parties, the issue that arises for determination is, whether the compensation awarded by the learned Tribunal is in accordance with law?

12. As stated above there is no dispute on the aspect of negligence. The only aspect and the challenge in the present petition is on the aspect of quantum of compensation awarded. The appellant/claimant has stated that given the injuries sustained by him and the amputation of his right upper limb and the physical disability at 80%, the award for functional disability would



have to be taken as 100%. The award for functional disability would have to be taken at 100%. It is contented that the right hand of the appellant/claimant has been amputated and given his vocation which is of a coolie, the appellant/claimant will no longer be able to perform his avocation. An examination of the evidence of P.W.4, Dr.Purushotham Sastry who treated the appellant/claimant reflects that the injuries of the appellant/claimant as well as the treatment followed. The relevant extract of the evidence of P.W.4 is as under:

"Patient was stabilized in the EMD as per the NABH protocol and sent for X-ray. X-ray showed.

- 1. Fracture Both Bone right fore arm over middle 1/3rd*
- 2. Fracture shaft proximal phalanx of middle finger*
- 3. Fracture middle phalanx of ring finger*
- 4. Fracture middle phalanx of little finger*

Patient was seen by Plastic Surgeon & Vascular surgeon. The vascular surgeon advised to follow the suggestion of the Plastic surgeon. Patient was again reviewed on 13.12.2017 by Plastic Surgeon. There was delayed capillary filling. There was edema and crepitus in the hand and forearm. Patient was give adequate antibiotics and analgesics.

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Patient was discharged on 14.12.2017.



Patient was contemplated surgery on 15.12.2017 in view of his general condition. As the attenders sought time for consent the case was postponed to 16.12.2017.

Consent for amputation was taken on 16.12.2017 and below elbow amputation was done on 16.12.2017. Regular dressings was done in the ward.

Patient underwent 2 more surgeries

- 1. Wound debridement on 28.12.2017.*
- 2. Split Skin Grafting on 13.01.2018.*

Patient was given adequate antibiotics and analgesics and discharged on 26.01.2018

Patient followed up in the OPD. His wound started healing well. Physiotherapy exercises were taught.

When he was last seen on 24.11.2020.

- 1. This is an Transradial (Below Elbow) amputation upper limb involving the Upper 1/3d of forearm.*
- 2. The Right upper limb is the dominant limb.*
- 3. The stump is fit for upper limb prosthesis.*

Calculation of Permanent Physical disability:

A) Trans Radial (Below Elbow)	
Upto upper 1/3 of forearm	70%
Dominant upper limb (Right)	10%
	80%

As per the above clinical & radiological evaluation, I am of the opinion that Egy: Mr. Ravi is having permanent physical disability of 80% calculated as per the Government of India Gazette Notification."

[Emphasis Supplied]



13. From an examination of the evidence, it reflects that not only was the appellant/claimant suffered seven fractures in his right forearm, he had to undergo plastic surgery and subsequently his right forearm below the elbow had to be amputated as well. The doctor thus held that the appellant/claimant lost his dominant limb, i.e., his right hand that his permanent physical disability would be 80%.

14. The Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Another***¹ has in detail discussed how the Court must calculate 'loss of future earning' due to permanent disability. The Supreme Court in ***Rajkumar's*** case has summarized the principles for assessment of disability in the following manner:

"10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising

¹ (2011) 1 SCC 343



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from a permanent disability will be different from the percentage of permanent disability.

Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). **We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.** (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567]).

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;



(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, **it has to determine whether such permanent disability has affected or will affect his earning capacity.**

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

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15. It may be noted that when compensation is awarded by treating the loss of future earning



capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

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19. We may now summarise the principles discussed above:

(i) **All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.**

(ii) **The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).**

(iii) **The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.**

(iv) **The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."**

[Emphasis Supplied]



15. It is not in dispute that prior to the accident, the appellant/claimant was working as a coolie and doing mason work. Not having his right hand available to him would ensure that he is unable to carry out any such work. It is also not disputed that the right forearm below the elbow has been amputated. Thus, this Court would award functional disability of the appellant/claimant at 100%. In addition, given the injuries suffered, the compensation that was awarded by the Tribunal under various heads, the surgery undertaken and the frequent visits to hospital, the amounts awarded under various heads deserves to be enhanced.

16. Since the appellant/claimant was aged 38 years, a multiplier of '15' was taken by Tribunal. The notional income for the year 2018 was 11,000/-. Thus, the loss of dependency would be recalculated as follows:

Loss of dependency	$\text{Rs.}11,000/- \times 12 \times 15 \times 100\%$ $= \text{Rs.}19,80,000/-$
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17. The amount towards pain and suffering, loss of income during laid up period, loss of amenities, conveyance and attendant charges would also be required to be enhanced. Accordingly, the amounts awarded are recalculated as follows:

Sl. No.	Heads of Compensation	Amount
1)	Compensation towards pain, shock and sufferings	Rs. 75,000/-
2)	Compensation towards loss of income during laid up period (Rs.11,000x3months)	Rs. 33,000/-
3)	Compensation towards attendant charges, extra diet, nourishment and conveyance	Rs. 35,000/-
4)	Compensation towards loss of amenities	Rs. 50,000/-
5)	Compensation towards medical expenses	Rs. 13,500/-
6)	Compensation towards loss of future income	Rs.19,80,000/-
	Total	Rs.21,86,500/-
	Less: awarded by the Tribunal	Rs.11,10,500/-
	Enhanced compensation	Rs.10,76,000/-

18. Hence, the appellant/claimant is entitled to total compensation of **Rs.21,86,500/-** along with interest at the rate of 6% per annum as awarded by the learned



Tribunal from the date of petition till the date of realization.

19. Accordingly, the Court proceeds to pass the following:

ORDER

(i) The appeals are ***allowed in part;***

(ii) The Impugned common Judgment and Award dated 28.10.2021 in M.V.C.No.335/2018 passed by the Principal Judge, Court of Small Causes and MACT, Mysuru, is modified, to the extent that the petitioner No.1 is entitled to total compensation of **Rs.21,86,500/-** against the compensation of **Rs.11,10,500/-** awarded by the Tribunal. The enhancement will be **Rs.10,76,000/-** along with interest at the rate of 6% per annum in addition to what has been awarded by the learned Tribunal;



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(iii) The remaining portion of the Impugned Award of the learned Tribunal remains undisturbed;

(iv) The respondent No.2/Insurance Company shall deposit the enhanced compensation with interest applicable thereon, as awarded by the learned Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment;

(v) On such deposit of compensation, the same shall be released in favour of the appellants/claimant on filing of an appropriate application by them for withdrawal of the enhanced amount;

(vi) The Registry is directed to draw the modified Award accordingly;

(vii) The Registry is directed to transmit a copy of this judgment and records to the concerned Tribunal; and



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(viii) Pending application(s), if any, stand closed.

No order as to costs.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

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List No.: 1 Sl No.: 17